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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,705	01/26/2001	Christopher S. Gouge	MS155721.2	6801
27195	7590	02/15/2006	EXAMINER	
AMIN & TUROCY, LLP 24TH FLOOR, NATIONAL CITY CENTER 1900 EAST NINTH STREET CLEVELAND, OH 44114			ART UNIT	PAPER NUMBER

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Communication Re: Appeal

Application No.

09/770,705

Examiner

Todd Ingberg

Applicant(s)

GOUGE ET AL.

Art Unit

2193

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ The Notice of Appeal filed on 12 December 2005 is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
- (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☒ other: See Attachment.

4. ☐ Because of the dismissal of the appeal, this application:

- (a) ☐ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration.


TODD INGBERG
PRIMARY EXAMINER

Defective Appeal Brief

1. The following defects are noted in the Appeal Brief of December 12, 2005.

On pages 5 and 10 the grounds of rejection are noted as 35 U.S.C. § 103 when the actual grounds are 35 U.S.C. § 101 and 35 U.S.C. § 102.

2. The following **issue** is noted.

On page 13 of the Appeal Brief the Appellant states:

“In the Advisory action (dated September 27, 2005) the Examiner in order to obfuscate the distinction between the cited document and the invention as claimed contends that the “prior art shows the mechanism [by] which DLLs merge with existing software.” The Office takes issue with the statement that the Examiner takes any willful action to ***obfuscate***.

Obfuscate as defined in the Webster’s II New Riverside University Dictionary as issued to employee’s of the USPTO.

1. To make dark or obscure.

2. To confuse

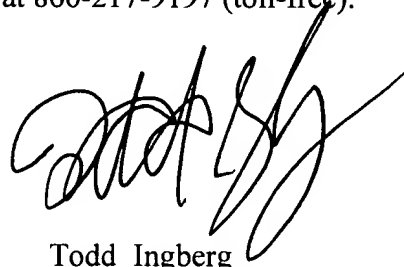
The Examiner’s attempt to explain the technology contained in the reference was not an attempt to obfuscate. The technology which is the basis of the rejection performs the merging code contained in a DLL into an existing program module is not an attempt to cause confusion or obscure. The Examiner’s actions were not an attempt to violate ethical responsibility. The Office requests the Appellant revisit this wording.

Correspondence Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd Ingberg whose telephone number is (571) 272-3723. The examiner can normally be reached on during the work week..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Todd Ingberg', is positioned above the printed name and title.

Todd Ingberg
Primary Examiner
Art Unit 2193